

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VINCENT HALL,

No. C 13-1426 TEH (PR)

Petitioner,

ORDER GRANTING MOTION FOR
RECONSIDERATION, VACATING ORDER
OF DISMISSAL AND RE-OPENING
CASE

v.

RALPH M. DIAZ, Warden,

Respondent.

_____ /

On March 29, 2013, Petitioner Vincent Hall, an inmate at the California Substance Abuse Treatment Facility and State Prison, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 24, 2013, the Court issued an Order Regarding Mixed Petition in which it found that Petitioner had filed a mixed petition containing exhausted and unexhausted claims because he had indicated in his petition that one of his claims was unexhausted. Doc. #2. In the Order, the Court explained to Petitioner that a federal court must dismiss a mixed petition and provided him with an opportunity to amend the petition by withdrawing the unexhausted claim and proceeding only on the exhausted claims, or to dismiss the mixed petition and return to federal court with a new petition once all claims were exhausted. The Court also explained that Petitioner could seek a stay of the petition while he was exhausting his claim in state court.

The Court granted Petitioner thirty days from the date of the Order to inform the Court how he wished to proceed with his mixed petition. The Court notified Petitioner that failure to

1 respond within thirty days would result in the dismissal of the
2 petition without prejudice to filing a new petition containing only
3 exhausted claims. Doc. #2.

4 On June 13, 2013, more than thirty days had passed and
5 Petitioner had not notified the Court how he wanted to proceed with
6 his mixed petition nor had he communicated with the Court in any
7 manner. Therefore, the Court dismissed the petition without
8 prejudice to refiling a new petition containing only exhausted
9 claims. Doc. #3. On June 24, 2013, the mail containing this Order
10 was returned to the Court as undeliverable. Doc. #4. It appears
11 that the mail was returned because the address had misstated
12 Petitioner's prisoner identification number. On July 9, 2013, the
13 clerk re-mailed the June 13, 2013 Order of Dismissal to Petitioner
14 using his correct identification number. Doc. #5.

15 On July 12, 2013, Petitioner sent a letter to the Court
16 indicating that he had called the court clerk who informed him that
17 his case had been dismissed. Doc. #5. He also stated that he had
18 called his attorney who said that she never received the Court's
19 April 24, 2013 Order that Petitioner mailed to her. Petitioner
20 indicates that counsel would have responded to this Order by
21 informing the Court how Petitioner wished to proceed with his mixed
22 petition.

23 From Petitioner's letter, the Court notes the following:
24 (1) although counsel has not appeared in this action on behalf of
25 Petitioner, Petitioner believes that counsel is representing him;
26 (2) Petitioner thought counsel would respond to the Court's April
27

1 25, 2013 Order Regarding Mixed Petition, but she did not because she
2 did not receive Petitioner's mail containing this Order; and
3 (3) although Petitioner does not explicitly request that his case be
4 re-opened, he implies this in his letter.

5 In the interest of justice, the Court construes
6 Petitioner's letter as a motion for reconsideration of the Order of
7 Dismissal. For good cause shown, the motion is granted, the Order
8 of Dismissal is vacated and the case is re-opened. However, either
9 Petitioner pro se or through his counsel, must respond to the April
10 24, 2013 Order Regarding the Mixed Petition. The Court grants
11 Petitioner twenty-eight (28) days from the date of this Order to
12 file his response. Petitioner is cautioned that, if he fails to
13 file the required response within this time-frame, his action again
14 will be dismissed without prejudice to re-filing when all claims are
15 exhausted.

16 If Petitioner is represented by counsel, counsel must file
17 a notice of appearance as counsel of record for Petitioner. The
18 Court then will send mail directly to counsel so that Petitioner
19 will not have to re-send the Court's mail to counsel.

20 IT IS SO ORDERED.

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22 DATED 07/22/2013



THELTON E. HENDERSON
United States District Judge

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